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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,102	12/31/2001	Takashi Mukaihara	381TO/41670C4	6848

7590 04/07/2005  
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EXAMINER	
TRAN, BINH Q	
ART UNIT	PAPER NUMBER
3748	

DATE MAILED: 04/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/032,102	<b>Applicant(s)</b> MUKAIHARA ET AL.	
	<b>Examiner</b> BINH Q. TRAN	<b>Art Unit</b> 3748	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 May 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 6,7 and 17-30 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6,7,17-19 and 23-25 is/are allowed.
- 6) ☒ Claim(s) 20-22, 26-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

Receipt and entry of Applicant's Preliminary Amendment dated May 27, 2004 is acknowledged.

#### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or

(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

***Claims 20-22, and 26-30 are rejected under 35 U.S.C. 102 (e) as being anticipated by Kurihara et al. (Kurihara) (Patent Number 5,341,642).***

Regarding claims 20, and 26, Kurihara discloses a diagnostic apparatus for diagnosing a deterioration state of a catalyst in an engine, comprising:

a memory (RAM) for storing a preset criterion value; and a processor (11) connected to the memory for obtaining an index value indicative of a conversion efficiency of the catalyst (2); receiving a value of a state variable of the engine that correlates with a physical quantity affecting a catalytic action of the catalyst (See Figs. 1-4; col. 6, lines 30-67; col. 7, lines 1-25);

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modifying the index value to a value in a standard state of the catalyst previously set as to the physical quantity using the value of the state variable; and determining the deterioration state of the catalyst by comparing the modified index value with the preset criterion value (See col. 7, lines 25-67; col. 8, lines 1-67; col. 9, lines 1-20).

Regarding claims 21, and 27, Kurihara further discloses that the physical quantity is a temperature of the catalyst (See col. 2, lines 57-64) and the state variable is selected from the group consisting of a quantity of intake air, a quantity of fuel injection, and a revolutions-per-minute of the engine (See col. 1, lines 64-67; col. 2, lines 1-24; col. 5, lines 42-67; col. 6, lines 1-30).

Regarding claims 22, and 28, Kurihara further discloses that the preset criterion value represents a limit of deterioration calling for replacement of the catalyst (See Figs. 4-6; col. 7, lines 25-67; col. 8, lines 1-67; col. 9, lines 1-20).

Regarding claims 29-30, Kurihara further discloses that the steps (d) and (e) are carried out by a processor which obtains the index value and the state variable from a memory which stores a predetermined range for the state variable (See Figs. 4-6; col. 7, lines 25-67; col. 8, lines 1-67; col. 9, lines 1-20).

***Allowable Subject Matter***

Claims 6-7, 17-19, and 23-25 are allowed.

Since allowable subject matter has been indicated, applicant is encouraged to submit formal drawings in response to this Office action. The early submission of formal drawings will permit the

Office to review the drawings for acceptability and to resolve any informalities remaining therein before the application is passed to issue. This will avoid possible delays in the issue process.

***Response to Arguments***

Applicant's arguments filed May 27, 2004 have been fully considered but they are not completely persuasive. **Claims 6-7, and 17-30 are pending.**

Applicant's cooperation in amending the claims to overcome the claim rejection is appreciated.

Applicants have argued that Mukaihira et al. (Mukaihira) does not teach or suggest Applicants's claimed invention. More specifically, Applicants assert that the reference to Mukaihira fails to disclose "*an apparatus and method in which a determination of the deterioration state of the catalyst is suspended if the value of a state variable is outside a predetermined range*". In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "*determination of the deterioration state of the catalyst is suspended if the value of a state variable is outside a predetermined range.*") are not recited in the rejected claim(s) (as *claims 20-22, and 26-30*). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Binh Tran whose telephone number is (571) 272-4865. The examiner can normally be reached on Monday-Friday from 8:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas E. Denion, can be reach on (571) 272-4859. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and for After Final communications.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BT  
April 01, 2005



Binh Q. Tran  
Patent Examiner  
Art Unit 3748